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the ground that the creditor as a matter of business relies upon the set-off as security in making advances to the bankrupt; while a stockholder can hardly be deemed to have in mind his statutory liability when he deals with the corporation.

Attempts are made upon various grounds to distinguish from the first class of cases the second class, where the individual creditor is allowed to sue. It is said that, since the whole proceeding is in disregard of the rights of other creditors, the stockholder is as much entitled to preference as the creditor who is suing him, *THOMPSON, COM. CORP.*, § 3790; or that it cannot be known that creditors will not be paid in full, *Mathez v. Neidig*, 72 N. Y. 100, 104; or that scattered stockholders should be protected as much as possible from creditors who may collect their debts several times, *Ball v. Anderson*, 196 Pa. St. 86. These arguments, however, tend rather to impeach the wisdom of the legislature in allowing suit by an individual creditor than to justify a departure from principle in order to lessen the resulting hardship. The cases concede that from lack of mutuality there is not a true set-off and that the defense of the stockholder must be rested upon equitable grounds. *Pierce v. Topeka Security Co.*, 60 Kan. 164. Furthermore in an analogous class of cases where the creditor may sue directly for unpaid subscriptions the stockholder is allowed no such defense. *Thompson v. Reno Savings Bank*, 19 Nev. 103; *Bolton Carbon Co. v. Mills*, 78 Ia. 460. On the whole, since the statutory liability is created for the benefit rather of the outside creditors than of the stockholders, it would seem that if either class is to be preferred, it should be the former.

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THE LAST CHANCE DOCTRINE. — "The party who has the last clear opportunity of avoiding the accident notwithstanding the negligence of his opponent is considered solely responsible for it." The last chance doctrine thus expressed was adopted in a recent Louisiana case. *Barnhill v. Texas & P. R. R. Co.*, 33 So. Rep. 63. Though stated so broadly, its importance as a doctrine is confined to those cases where the last opportunity to avoid the damage lies with the defendant; for where the negligence of both parties is concurrent, or where the plaintiff has the last chance, recovery is denied by well-established rules of contributory negligence.

The origin of the doctrine is found in the case of *Davies v. Mann*, 10 M. & W. 546. The basis there suggested for it is that, though the plaintiff was negligent, his negligence was no part of the legal cause of his damage, since the defendant had the last chance to avoid the accident. The New Hampshire court stated this position clearly when it said that under such circumstances the defendant's negligence was, in law, the sole cause of the injury. See *Nashua Iron, etc., Co. v. Worcester, etc., R. R.*, 62 N. H. 159, 163. In that case, however, the fact appeared that a third party's property had been damaged by the accident, and that he had been allowed recovery against the plaintiff. This was possible only on the ground that the plaintiff's negligence was a legal cause of the third party's damage. The plaintiff's negligence thus was treated as a legal cause of the third party's damage, though not of his own. Since the facts in the cases were the same and the damage to each was apparently a natural and probable consequence of the plaintiff's negligence, the inconsistency in the court's position is apparent. The last chance doctrine consequently must stand, if at all, as an exception

to the general rule which denies recovery to a plaintiff guilty of contributory negligence.

The bar raised by contributory negligence rests on the policy of making the loss lie on a person who has been instrumental in bringing it upon himself. See 3 HARV. L. REV. 269. *Prima facie* the last chance rule seems to shift the loss to the defendant merely because he happens to be the last wrongdoer. The argument is often made, however, that the negligence of a defendant occurring under the circumstances created by the plaintiff's prior negligence is more serious than that of the plaintiff. But it is hard to see how a higher degree of care could be demanded of the defendant by virtue of the prior negligence unless he had knowledge of it. Cf. THOMP. COM. NEG., § 232. If such knowledge were made essential, the statement of the rule would take its strongest form. Even so it is open to two objections. In the first place, it is based on the discredited theory of comparative negligence, which allows recovery to a negligent plaintiff when the defendant's negligence is "gross," and his own but "ordinary" or "slight." See *Cicero, etc., Ry. v. Menxer*, 160 Ill. 320. And secondly, thus qualified, it would rarely prove of practical value, for if the defendant had the required knowledge his tort generally would amount to an intentional tort to which the rules of contributory negligence have no application. See SPRAGUE, CONTRIB. NEG., 7. The last chance rule as a distinct doctrine accordingly seems to deserve no place in the law.

#### SALE BY OFFICER OR STOCKHOLDER OF INFLUENCE IN CORPORATION.—

A seemingly lax view of the duty owed by the officers of a corporation to the stockholders and by the stockholders to each other is presented by a late decision in New York. The plaintiff contracted to buy part of the defendants' stock and to use his vote and influence to retain in office the existing board of directors, in consideration of the defendants' promise to procure for the plaintiff the position of cashier of the corporation for five years and to repurchase the stock at a stipulated price should he be sooner discharged. The plaintiff made the purchase and received the appointment, but was discharged before the time expired, and brought an action for the defendants' refusal to repurchase the stock. It was held, two justices dissenting, that the contract was not void as against public policy. *Bonta v. Gridley et al.*, 78 N. Y. Supp. 961 (App. Div. 4th Dept.).

This contract seems objectionable in that both parties gave up, for benefits to themselves as individuals, their independent judgment as stockholders regarding the election of officers, and in that the plaintiff also sold his influence as cashier. The general principle of law is, of course, that persons to whom the interests of others are committed, must act disinterestedly in behalf of the beneficiaries. *Oscanyan v. Arms Co.*, 103 U. S. 261. Officers of a corporation clearly fall within the scope of this principle. *Wardell v. U. P. R. R. Co.*, 103 U. S. 651, 658. Similarly, the community of interest subsisting between stockholders places each in a *quasi-fiduciary* relation to the others, and sound policy requires that each act *bona fide* for the prosperity of the corporation, uninfluenced by promises of personal reward. *Woodruff v. Wentworth*, 133 Mass. 309. Accordingly the principal case seems insupportable, and it is opposed to the weight of authority. *Guernsey v. Cook*, 120 Mass. 501; *Noel v. Drake*, 28 Kan. 265. How far these prin-